COUNTY OF IMPERIAL

IBLA 80-311 Decided December 15, 1980

Appeal from decision of California State Office, Bureau of Land Management, holding the Elmore placer mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

   Under 43 U.S.C. 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

APPEARANCES: David E. Pierson, Director of Public Works, County of Imperial.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The County of Imperial has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated December 26, 1979, declaring the Elmore placer mining claim of the Frink District abandoned and void. BLM stated that the location notice was returned because the mining claim filing for this claim was not received on or before October 22, 1979, the date for filing claims located before October 21, 1976, as required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a). The decision indicated that

failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claims and it shall be void.

On appeal the County of Imperial has indicated the filing was late because an earthquake collapsed the County Office Building on October 15, 1979. Although they indicate they had every intention to meet the October 21, 1979, deadline, they could not do so because of circumstances beyond their control.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744(b), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

> [§] 3833.1-2 Manner of recordation -- Federal lands.
>
> (a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the California State Office by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until October 29, 1979. Therefore, the State office properly found that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. It is indeed unfortunate that the County Office Building was

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

damaged as indicated on October 15, 1979. However, there is no latitude in the law or the regulation to excuse the late filing for an act of God. These requirements are mandatory and failure to comply with them must result in a finding that the claims are void. G. R. Marquardson, 49 IBLA 114 (1980).

Although the county has indicated that it had intended to comply with the requirements of FLPMA, supra, no explanation has been given for waiting until the "eleventh hour" to submit the required documents. The county received title to the unpatented placer mining claim in 1955. A copy of the notice of location of the claim could have been filed with BLM at any time between October 21, 1976, and October 22, 1979. Proof of the annual assessment work for the year ending August 31, 1979, could have been filed at any time thereafter, prior to October 22, 1979.

We note that the facts of this case present a question as to the qualifications of the County of Imperial to locate a mining claim on public lands of the United States. Although authority on this point is limited, county and municipal governments are not considered citizens as the word is used in 30 U.S.C. § 22 (1976), and, therefore, do not qualify to exercise the privileges of citizens of the United States to locate mining claims. See § 5.6 Government Agencies, American Law of Mining (1974), p. 725.

However, this treatise also states:

> [S]uch limitations as may exist on the making of mineral locations by governmental agencies do not extend to their subsequent acquisition. Unpatented claims are uniformly classified as real property interests subject to state taxation. To the extent the state, or local subdivisions thereof, can tax a claim, it can levy against it and take the miner's possessory title in default of purchasers at statutory tax sale proceedings. This right has never been questioned. As there appear to be no policy objections to the acquisition of unpatented mining titles by state and local governments in this situation, there would seem to be no objection to their acquisition of such properties generally in the proper exercise of their sovereign and recognized proprietary powers.

American Law of Mining, supra.

In this instance the County of Imperial has not attempted to record an original location. The record shows that the county acquired its interest in this claim by quit claim deed, dated September 30, 1955, from the original locators, R. G. Elmore, Lela Elmore, L. N. Lamb, Gertrude Lamb, Byron M. Graham, Jr., Marjorie Fisher, Tom Fisher, and Jesse Fisher. The claim was originally

located by this group June 29, 1946. Accordingly, all else being regular and timely, this question would not have precluded consideration of the county's location notice.

We also note that the claim was located for sand and gravel. As common varieties of these materials were removed from minerals subject to location under the mining laws by the Act of July 23, 1955, 30 U.S.C. § 611 (1976), the decision of the State Office was incorrect in advising that the claim could be relocated, subject to intervening rights. In the circumstances, the county may wish to investigate the possibility of a free use permit from BLM under 43 CFR 3621.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I would call for briefs on the issue of whether the County of Imperial is a citizen and entitled to exercise the privileges granted under 30 U.S.C. § 22 (1976). Here the county was not the original locator. See Rocky Mountain Mineral Law Foundation, American Law of Mining, supra.

If the county is deemed properly entitled to hold an unpatented mining claim, the decision herein violates the purpose of the statute by assuming that Congress would have intended an abandonment when an earthquake prevented county personnel from entering the courthouse and complying with the statute. From the beginning, acts of God have been recognized as requiring an exception to legal norms. An exception should be read into the statute to avoid the type of injustice, oppression, and absurd consequence referred to in Harris v. United States, 215 F.2d 69 (4th Cir. 1954) at 76:

> As said by Mr. Justice Field in United States v. Kirby, 7 Wall 482, 486, 19 L.Ed. 278, in a passage quoted with approval by Chief Justice Hughes in Sorrells v. United States, 287 U.S. 435, 447, 53 S.Ct. 210, 214, 77 L.Ed. 413:
>
> > "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such case should prevail over its letter."

See also United States v. American Trucking Association, 310 U.S. 534, 542-43 (1939); United States v. Rippetoe, 178 F.2d 735, 737-38 (4th Cir. 1949); 82 C.J.S. Statutes § 382b (1953), and cases cited.

The deadline was October 22, 1979, and the earthquake was October 15, 1979. The majority indicate that appellant should have complied with the statute before that date, or the rights of the county tax payers should be deemed abandoned. This concept does not appear in statute, regulation, or legislative history.

Joseph W. Goss
Administrative Judge